

PROPOSED REPEAL OF SECTIONS 121-128 OF TITLE 1 OF THE CCR

TITLE 1. GENERAL PROVISIONS

DIVISION 1. Office of Administrative Law

CHAPTER 1. Review of Proposed Regulations; ~~Procedures for Regulatory Determinations~~

ARTICLE 3. Procedures for Regulatory Determinations.

Section 121. Definitions.

The following definitions shall apply to the regulations contained in Article 3 of this chapter:

- ~~—(a) “Determination” means a finding by OAL as to whether a state agency rule is a “regulation,” as defined in Government Code Section 11342.600, which is subject to the APA, but was not adopted as a regulation and filed with the Secretary of State pursuant to the APA, and is therefore in violation of Government Code Section 11340.5(a).~~
- ~~—(b) “Form 1013” means the form titled “Request for Determination Form 1013” (1/02), which appears in Appendix A to Article 3 of this Chapter.~~
- ~~—(c) “Request for determination” means a request made by any person to OAL, in accordance with the procedures specified in this article, to issue a determination as provided by Government Code Section 11340.5, as to whether a state agency rule is a “regulation,” as defined in Government Code Section 11342.600.~~
- ~~—(d) “Requester” means the person submitting a request for determination.~~
- ~~—(e) “State agency rule” means any state agency guideline, criterion, bulletin, manual, instruction, order, standard of general application or other rule which has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA.~~
- ~~—(f) “Transmit” means to hand deliver a letter, document or other written instrument to the addressee or to deposit the written instrument into the United States mail or other mail delivery service.~~

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Section 11340.5(b), Government Code; and *Armistead v. State Personnel Board* (1978) 22 Cal.3d 198, 149 Cal.Rptr. 1.

Section 122. Contents of Requests for Determination.

- ~~—(a) Any person requesting a determination shall complete and submit a Form 1013 to OAL.~~
- ~~—(b) Any person who submits a completed Form 1013 to OAL shall declare under penalty of perjury in accordance with Code of Civil Procedure Section 2015.5 that all information contained in the form is true and correct and that any documents submitted with the form are to the best of his or her knowledge true and correct copies of the originals.~~
- ~~—(c) Any person who submits to OAL a completed Form 1013 shall before or at the same time transmit a copy of the form and any written information or documents contained in or submitted with the form to the head of the state agency whose rule is the subject of the request.~~

~~—(d) If the Form 1013 is submitted by a state agency, the form shall be signed and certified by the head of the state agency or his or her authorized representative under penalty of perjury in accordance with Code of Civil Procedure Section 2015.5. The Form 1013 shall include the legal analysis and conclusions of the agency's legal counsel in addition to the other information required by this section.~~

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Section 11340.5(b), Government Code.

Section 123. Processing a Request for Determination: Initial Receipt and Review, Summary Disposition.

~~(a) Within 30 days after the date of receipt by OAL of a Form 1013, OAL shall send a written notification to the requester that:~~

- ~~—(1) the form is complete and accepted for filing, or~~
- ~~—(2) the form is deficient and what specific additional information is required, or~~
- ~~—(3) the request is not accepted pursuant to section 123, subsection (b), the specific provision that applies, and a brief explanation for the rejection.~~

~~—(b) OAL shall not accept for filing any request for determination if OAL finds that the state agency rule being challenged:~~

- ~~—(1) has been superseded;~~
- ~~—(2) has expired by its own terms;~~
- ~~—(3) has been declared in writing by the state agency under penalty of perjury, in accordance with Code of Civil Procedure Section 2015.5, to have been rescinded or to no longer be in effect;~~
- ~~—(4) has been nullified by a court in a judgment that has become final;~~
- ~~—(5) is contained in a regulation adopted pursuant to the APA;~~
- ~~—(6) is contained in a California statute;~~
- ~~—(7) is clearly within the scope of an express statutory exemption from the APA; or~~
- ~~—(8) is the same rule, or is substantially the same (i.e., has the same effect) as a rule from the same state agency, on which OAL has already issued a determination.~~

~~—(c) If, after accepting a request for determination, OAL finds that the challenged state agency rule falls within subsection (b), OAL may at any time issue a summary determination letter instead of a determination pursuant to sections 124, 125, and 126. Any summary determination letter shall be issued pursuant to section 127.~~

~~—(d) Nothing in this article shall preclude OAL from considering or requesting additional information from the requester, if the requester in submitting this information to OAL:~~

- ~~—(1) declares in writing, under penalty of perjury in accordance with Code of Civil Procedure section 2015.5, that all information submitted is true and correct and that any documents submitted with the information are to the best of his or her knowledge true and correct copies of the originals, and~~
- ~~—(2) provides a copy of the information and documents, if any, to the head of the state agency whose rule is the subject of the request, using the same means, or as speedy a means, as was used to submit the information to OAL, and~~

~~—(3) includes a signed and dated statement under penalty of perjury, in accordance with Code of Civil Procedure section 2015.5, describing how and when the person submitting the information and documents, if any, transmitted them to the head of the state agency whose rule is being challenged.~~
~~—(e) Requests for determination that have been accepted shall be considered in the order accepted. However, determinations may be issued in the order in which they are completed.~~

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Section 11340.5(b), Government Code.

Section 124. Publication of Request; Written Public Comments.

~~(a) After accepting a request for determination, OAL shall, as soon as program resources permit, publish in the California Regulatory Notice Register a notice containing the following:~~

~~—(1) the request for determination, or a summary or description of the request for determination; and~~

~~—(2) a clear and concise summary of the challenged state agency rule.~~

~~—(b) The following requirements shall apply to all comments submitted to OAL. OAL shall publish these requirements as part of the notice required by subsection (a) above:~~

~~—(1) Any person may submit a written comment concerning the challenged state agency rule to OAL within 30 days after the date of publication of the notice; and~~

~~—(2) Written comments received by OAL within the 30-day period that comply with the requirements of section 124 shall be considered in making a determination.~~

~~—(3) Any person who submits a written comment to OAL pursuant to section 124 shall declare in writing, under penalty of perjury in accordance with Code of Civil Procedure Section 2015.5, that all information submitted is true and correct and that any documents submitted with the comment are to the best of his or her knowledge true and correct copies of the originals.~~

~~—(4) Any person who submits a written comment to OAL pursuant to section 124 shall transmit a copy of the written comment, including any attachments, to the requester and to the head of the state agency whose rule is the subject of the request for determination. A copy of a signed and dated statement under penalty of perjury in accordance with Code of Civil Procedure Section 2015.5 describing how and when the person transmitted a copy of the written comment and attachments to the requester and to the head of the state agency shall be submitted to OAL with the written comment.~~

~~—(c) When OAL publishes a request for determination in the California Regulatory Notice Register, OAL shall send written notification to:~~

~~—(1) the person who submitted the request; and,~~

~~—(2) the head of the state agency whose rule is the subject of the request.~~

~~—(d) Nothing in this article shall preclude OAL from considering or requesting additional information from the person submitting a comment if the person, in submitting this information to OAL:~~

~~—(1) declares in writing under penalty of perjury, in accordance with Code of Civil Procedure Section 2015.5, that all information submitted is true and correct and that any documents submitted with the information are to the best of his or her knowledge true and correct copies of the originals, and~~

- ~~—(2) provides a copy of the information and documents, if any, to the requester and the head of the state agency whose rule is the subject of the request, using the same means, or as speedy a means, as was used to submit the information to OAL, and~~
- ~~—(3) includes a signed and dated statement under penalty of perjury in accordance with Code of Civil Procedure Section 2015.5 describing how and when the person submitting the information and documents, if any, transmitted them to the requester and the head of the state agency whose rule is being challenged.~~

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Section 11340.5(b), Government Code.

Section 125. Agency Response.

- ~~—(a) In making its determination, OAL shall consider any written response received from the state agency prior to or within 45 days after the publication of the request for determination that complies with the requirements of this section.~~
- ~~—(b) The head of the state agency or his or her authorized representative shall sign and verify in accordance with Code of Civil Procedure Section 2015.5 any response submitted to OAL pursuant to this section. If the response is signed and verified by someone other than the head of the state agency, the response shall state that the signer has been authorized to do so by the agency head.~~
- ~~—(c) Any response submitted by the state agency shall be transmitted by the state agency to the requester. The agency shall submit to OAL a copy of a signed and dated statement under penalty of perjury in accordance with Code of Civil Procedure Section 2015.5 describing how and when the state agency transmitted a copy of its response to the requester.~~
- ~~—(d) Nothing in this article shall preclude OAL from considering or requesting additional information from the state agency if the state agency in submitting this information to OAL:~~
 - ~~—(1) declares in writing under penalty of perjury, in accordance with Code of Civil Procedure Section 2015.5, that all information submitted is true and correct and that any documents submitted with the information are to the best of his or her knowledge true and correct copies of the originals, and~~
 - ~~—(2) provides a copy of the information and documents, if any, to the requester using the same means, or as speedy a means, as was used to submit the information to OAL, and~~
 - ~~—(3) includes a signed and dated statement under penalty of perjury, in accordance with Code of Civil Procedure Section 2015.5, describing how and when the person submitting the information and documents, if any, transmitted them to the requester.~~

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Section 11340.5(b), Government Code.

Section 125.5 Additional Information: Deadlines.

- ~~(a) If additional information is submitted to OAL pursuant to sections 123(d), 124(d), or 125(d), then the following deadlines shall apply to replies and rebuttals to the additional information:~~

- ~~—(1) If additional information is submitted by the requester pursuant to section 123(d), then the agency shall have 15 days from the date of receipt of the requester's information to submit a reply to OAL, if it so chooses. The requester shall then have 10 days from the date of receipt of the agency's reply to submit a rebuttal to OAL.~~
- ~~—(2) If additional information is submitted by a commenter pursuant to section 124(d), the requester and the agency shall then have 15 days from the date of receipt of the commenter's information to submit a reply to OAL, if either one so chooses.~~
- ~~—(3) If additional information is submitted by the agency pursuant to section 125(d), then the requester shall have 15 days from the date of receipt of the agency's information to submit a reply to OAL, if it so chooses. The agency shall then have 10 days from the date of receipt of the requester's reply to submit a rebuttal to OAL.~~
- ~~—(b) All additional information, replies, and rebuttals submitted to OAL for consideration shall comply with the declaration and other requirements of sections 123(d), 124(d), and 125(d), as applicable.~~
- ~~—(c) OAL may extend the deadlines upon request by the requester or agency upon a showing of good cause by the requester or agency that more time is needed in order to properly respond.~~

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Section 11340.5(b), Government Code.

Section 126. Time Period Within Which OAL Shall Issue a Determination.

~~Within 75 days of the date of publication of the notice of the request for determination pursuant to section 124, OAL shall issue a written determination as to whether the state agency rule is a "regulation," along with the reasons supporting the determination, unless additional time is needed by OAL to consider additional information submitted by the requester pursuant to section 123(d), by a commenter pursuant to section 124(d), or by the agency pursuant to section 125(d), and to allow for the additional reply and rebuttal periods specified in section 125.5.~~

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Section 11340.5(b), Government Code.

Section 127. Notification of the Issuance of a Determination.

- ~~(a) OAL's determination and supporting reasons shall be:~~
 - ~~—(1) filed upon issuance with the Secretary of State,~~
 - ~~—(2) published in the California Regulatory Notice Register, and~~
 - ~~—(3) transmitted to the requester, to the agency, to the Governor and to the Legislature.~~

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Section 11340.5(b) and (c), Government Code.

Section 128. Procedures Governing Issuance of a Determination by OAL on Its Own Motion.

- ~~(a) When OAL elects to issue a determination on its own motion:~~
- ~~—(1) the provisions of this article shall apply;~~
 - ~~—(2) the notice shall specify that OAL intends to issue a determination on its own motion; and~~
 - ~~—(3) OAL's written determination shall specify that OAL has issued the determination on its own motion.~~

NOTE: Authority cited: Section 11342.4, Government Code. Reference: Section 11340.5(b), Government Code.